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SENATE BILL 792

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO HEALTH CARE; CLARIFYING PROVIDER SPECIALITY
REPRESENTATION REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-6-15 NMSA 1978 (being Laws 1969,
Chapter 46, Section 6, as amended) is amended to read:

"61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
SUSPENDED-- LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
PROCEDURE-- PRACTICE AFTER SUSPENSION OR REVOCATION-- PENALTY--
UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED-- FEES AND
EXPENSES. --

A. The board may refuse to license and may revoke
or suspend a license that has been issued by the board or a
previous board and may fine, censure or reprimand a licensee
upon satisfactory proof being made to the board that the

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1 applicant for or holder of the license has been guilty of
2 unprofessional or dishonorable conduct. The board may also
3 refuse to license an applicant who is unable to practice
4 medicine, or practice as a physician assistant or an
5 anesthesiologist assistant, pursuant to Section 61-7-3 NMSA
6 1978. All proceedings shall be as required by the Uniform
7 Licensing Act or the Impaired Health Care Provider Act.

8 B. The board may, in its discretion and for good
9 cause shown, place the licensee on probation on the terms and
10 conditions it deems proper for protection of the public, for
11 the purpose of rehabilitation of the probationer or both. Upon
12 expiration of the term of probation, if a term is set, further
13 proceedings may be abated by the board if the holder of the
14 license furnishes the board with evidence that the licensee is
15 competent to practice, is of good moral character and has
16 complied with the terms of probation.

17 C. If evidence fails to establish to the
18 satisfaction of the board that the licensee is competent and is
19 of good moral character or if evidence shows that the licensee
20 has not complied with the terms of probation, the board may
21 revoke or suspend the license. If a license to practice in
22 this state is suspended, the holder of the license may not
23 practice during the term of suspension. A person whose license
24 has been revoked or suspended by the board and who thereafter
25 practices or attempts or offers to practice in New Mexico,

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1 unless the period of suspension has expired or been modified by
2 the board or the license reinstated, is guilty of a felony and
3 shall be punished as provided in Section 61-6-20 NMSA 1978.

4 D. "Unprofessional or dishonorable conduct", as
5 used in this section, means, but is not limited to because of
6 enumeration, conduct of a licensee that includes the following:

7 (1) procuring, aiding or abetting a criminal
8 abortion;

9 (2) employing a person to solicit patients for
10 the licensee;

11 (3) representing to a patient that a
12 manifestly incurable condition of sickness, disease or injury
13 can be cured;

14 (4) obtaining a fee by fraud or
15 misrepresentation;

16 (5) willfully or negligently divulging a
17 professional confidence;

18 (6) conviction of an offense punishable by
19 incarceration in a state penitentiary or federal prison or
20 conviction of a misdemeanor associated with the practice of the
21 licensee. A copy of the record of conviction, certified by the
22 clerk of the court entering the conviction, is conclusive
23 evidence;

24 (7) habitual or excessive use of intoxicants
25 or drugs;

1 (8) fraud or misrepresentation in applying for
2 or procuring a license to practice in this state or in
3 connection with applying for or procuring renewal, including
4 cheating on or attempting to subvert the licensing
5 examinations;

6 (9) making false or misleading statements
7 regarding the skill of the licensee or the efficacy or value of
8 the medicine, treatment or remedy prescribed or administered by
9 the licensee or at the direction of the licensee in the
10 treatment of a disease or other condition of the human body or
11 mind;

12 (10) impersonating another licensee,
13 permitting or allowing a person to use the license of the
14 licensee or practicing as a licensee under a false or assumed
15 name;

16 (11) aiding or abetting the practice of a
17 person not licensed by the board;

18 (12) gross negligence in the practice of a
19 licensee;

20 (13) manifest incapacity or incompetence to
21 practice as a licensee;

22 (14) discipline imposed on a licensee by
23 another state, including probation, suspension or revocation,
24 based upon acts by the licensee similar to acts described in
25 this section. A certified copy of the record of suspension or

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1 revocation of the state making the suspension or revocation is
2 conclusive evidence;

3 (15) the use of a false, fraudulent or
4 deceptive statement in a document connected with the practice
5 of a licensee;

6 (16) fee splitting;

7 (17) the prescribing, administering or
8 dispensing of narcotic, stimulant or hypnotic drugs for other
9 than accepted therapeutic purposes;

10 (18) conduct likely to deceive, defraud or
11 harm the public;

12 (19) repeated similar negligent acts;

13 (20) employing abusive billing practices;

14 (21) failure to report to the board any
15 adverse action taken against the licensee by:

16 (a) another licensing jurisdiction;

17 (b) a peer review body;

18 (c) a health care entity;

19 (d) a professional or medical society or
20 association;

21 (e) a governmental agency;

22 (f) a law enforcement agency; or

23 (g) a court for acts or conduct similar
24 to acts or conduct that would constitute grounds for action as
25 defined in this section;

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1 (22) failure to report to the board surrender
2 of a license or other authorization to practice in another
3 state or jurisdiction or surrender of membership on any medical
4 staff or in any medical or professional association or society
5 following, in lieu of and while under disciplinary
6 investigation by any of those authorities or bodies for acts or
7 conduct similar to acts or conduct that would constitute
8 grounds for action as defined in this section;

9 (23) failure to furnish the board, its
10 investigators or representatives with information requested by
11 the board;

12 (24) abandonment of patients;

13 (25) being found mentally incompetent or
14 insane by a court of competent jurisdiction;

15 (26) injudicious prescribing, administering or
16 dispensing of a drug or medicine;

17 (27) failure to adequately supervise, as
18 provided by board rule, a medical or surgical assistant or
19 technician or professional licensee who renders health care;

20 (28) sexual contact with a patient or person
21 who has authority to make medical decisions for a patient,
22 other than the spouse of the licensee, after representing or
23 inferring that the activity is a legitimate part of the
24 patient's treatment;

25 (29) conduct unbecoming in a person licensed

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1 to practice or detrimental to the best interests of the public;

2 (30) the surrender of a license or withdrawal
3 of an application for a license before another state licensing
4 board while an investigation or disciplinary action is pending
5 before that board for acts or conduct similar to acts or
6 conduct that would constitute grounds for action pursuant to
7 this section;

8 (31) sexual contact with a former mental
9 health patient of the licensee, other than the spouse of the
10 licensee, within one year from the end of treatment;

11 (32) sexual contact with a patient when the
12 licensee uses or exploits treatment, knowledge, emotions or
13 influence derived from the previous professional relationship;

14 (33) improper management of medical records,
15 including failure to maintain timely, accurate, legible and
16 complete medical records;

17 (34) failure to provide pertinent and
18 necessary medical records to a physician or patient of the
19 physician in a timely manner when legally requested to do so by
20 the patient or by a legally designated representative of the
21 patient;

22 (35) undertreatment of pain as provided by
23 board rule;

24 (36) interaction with physicians, hospital
25 personnel, patients, family members or others that interferes

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1 with patient care or could reasonably be expected to adversely
2 impact the quality of care rendered to a patient;

3 (37) soliciting or receiving compensation by a
4 physician assistant or anesthesiologist assistant from a person
5 who is not an employer of the assistant; or

6 (38) willfully or negligently divulging
7 privileged information or a professional secret.

8 E. As used in this section, "fee splitting"
9 includes offering, delivering, receiving or accepting any
10 unearned rebate, refunds, commission preference, patronage
11 dividend, discount or other unearned consideration, whether in
12 the form of money or otherwise, as compensation or inducement
13 for referring patients, clients or customers to a person,
14 irrespective of any membership, proprietary interest or co-
15 ownership in or with a person to whom the patients, clients or
16 customers are referred.

17 F. For the purposes of this section, "false or
18 misleading statements" includes holding oneself out as a
19 specialist, board certified, certified, a subspecialist or an
20 expert when that person has not had at least one year of
21 specialty training at an accredited institution or is not
22 currently certified by a nationally recognized accrediting
23 body.

24 [~~F.~~] G. Licensees whose licenses are in a
25 probationary status shall pay reasonable expenses for

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1 **maintaining probationary status, including laboratory costs**
2 **when laboratory testing of biological fluids are included as a**
3 **condition of probation. "**

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